

1 Leonard B. Boudin
2 Rabinowitz, Boudin & Standard
3 30 East 42nd Street
4 New York, New York
5
6 Charles R. Nesson
7 Langdell Hall
8 Cambridge, Massachusetts
9
10 Arthur Berman
11 8920 Wilshire Boulevard Suite 520
12 Beverly Hills, California 90211
13
14 Attorneys for Defendant
15

16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF MASSACHUSETTS
18

19 UNITED STATES OF AMERICA,)
20)
21 Plaintiff,)
22)
23 vs.)
24)
25 DANIEL ELLSBERG,)
26)
27 Defendant.)
28)
29

No. 8354-WMB

AFFIDAVIT OF ABRAM CHAYES

30 STATE OF MASSACHUSETTS)
31) SS
32 COUNTY OF MIDDLESEX)

Abram Chayes, being first duly sworn, deposes and says:

1. My name is Abraham Chayes. I live at 3 Hubbard Park, Cambridge, Massachusetts 02138. I am presently employed as Professor of Law at Harvard Law School, teaching courses in Civil Procedure and International Law.

2. My professional experience includes: 1949-50, legal adviser to Governor Chester Bowles of Connecticut; 1951-52, law clerk to Justice Felix Frankfurter, United States Supreme Court; 1952-55, associate, Covington & Burling, Washington, D.C.; 1955-60, Associate Professor and then Professor of Law, Harvard Law School; 1964-65, of counsel, Ginsburg & Feldman, Washington, D.C.

3. From January 1961 to June 1964 I held the office of Legal Adviser to the United States Department of State.

1 4. The Legal Adviser is appointed by the President
2 with the advice and consent of the Senate and has the statutory
3 rank of Assistant Secretary of State. He has general
4 responsibility for the legal work of the Department in the
5 fields of both international and domestic law. He supervises
6 an office of some 60 lawyers. His responsibilities are
7 comparable to those of the General Counsel of other Cabinet
8 departments.

9 5. On a number of occasions during my tenure, I was
10 officially consulted about the scope of Title 18 U.S.C. Sec. 793,
11 in connection with incidents of unauthorized disclosure to
12 newspapers of information classified under Executive Order 10501.
13 In each case, I responded to the effect that criminal liability
14 under that section could not be established without a showing
15 of specific intent to injure the United States or to aid a foreign
16 power; that the circumstances of publication in the particular
17 case made such proof unlikely; and that absent such intent, the
18 only recourse was to administrative penalties within the
19 Department. To the best of my recollection, one or more of
20 these opinions was delivered in writing.

21 6. On one occasion I was consulted with respect to the
22 enforcement of the undertaking in the Security Termination
23 Statement signed by officers or employees upon leaving the
24 government service to the effect that the employee had surrendered
25 all classified information in his custody and would not knowingly
26 or willfully communicate, deliver or transmit classified
27 information to an unauthorized person or agency. The question
28 was whether this undertaking could be enforced by criminal
29 penalties. I advised that absent conduct accompanied by the
30 specific intent required for conviction under § 793 or amounting
31 independently to a violation of some other provision of the
32 Criminal Code, criminal enforcement of this undertaking was

1 not available. To the best of my knowledge, this opinion
2 was delivered in writing.

3 7. Although these opinions represented my independent
4 legal judgment, they were prepared in consultation with
5 responsible attorneys in the Office of the Legal Adviser
6 and, in some cases, after consultation with the Department
7 of Justice. It was my understanding that this interpretation
8 represented the consistent and unbroken view of both Depart-
9 ments as to the scope of the statute involved.

10 8. Written opinions of the kind mentioned herein would
11 not ordinarily be classified in the Department of State and
12 would as a usual practice be preserved among the permanent
13 records of the Department.

14
15
16 Abram Chayes

17 Subscribed and sworn to me this day of October, 1971.

18
19
20 NOTARY PUBLIC
21
22
23
24
25
26
27
28
29
30
31
32